

SENATE BILL 1687
By Cohen

AN ACT to amend Tennessee Code Annotated, Title 11, Chapter 4, relative to state forests and forestry.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 11, Chapter 4, is amended by adding Sections 2 through 12 of this act as a new part thereto.

SECTION 2. This act shall be known and may be cited as the "Tennessee Industrial Chipmill Facility Impact Review and Taxpayer Protection Act of 2005."

SECTION 3. The general assembly finds that:

(1) Tennessee's secondary wood products industries make an important contribution to Tennessee's economy, and that Tennessee should continue to develop industries that make a significant contribution to employment in a manner consistent with sustaining the productivity and environmental integrity of Tennessee's forest resources;

(2) Forest resource surveys suggest that some areas of Tennessee have not had favorable growth-to-removal ratios, resulting in more timber being harvested than is grown over a period of time;

(3) Industrial chipmill facilities rely upon clear cutting large quantities of Tennessee's timber resources and have the potential of over harvesting and causing timber shortages to the detriment to Tennessee's secondary wood products industry. Tennessee, therefore, as a matter of public policy, should only extend economic assistance to those industrial chipmill facilities that promote forest resource management

by ensuring a sustainable supply of timber for existing businesses without jeopardizing forest health, productivity, and the environment.

SECTION 4. For purposes of this act, unless the context otherwise requires:

(1) "Applicant" means any industrial chipmill facility that applies for financial assistance or economic incentives as specified in this act.

(2) "Commissioner" means the commissioner of agriculture.

(3) "Department" means the department of agriculture.

(4) "Industrial chipmill facility" means any entity or organization that produces wood chips or wood flakes or uses wood chip or wood flake material for purposes of processing and producing fiber-based products, including, but not limited to, rayon, paper, medium density fiber board, or oriented strand board.

(5) "Procurement zone" means the geographic area within which a specific industrial chipmill facility may purchase or harvest timber.

(6) "Sustainable" means those forest resource management activities that ensure the long-term inherent productivity of the forest, maintain forest health and viability, and utilize recognized standards of performance for environmental protection.

(7) "Timber" means forest trees of any size or caliper that may be harvested for commercial purposes.

SECTION 5.

(a) As a condition of awarding an applicant any form of financial assistance or economic incentive administered by the department of economic and community development or the Tennessee local development authority or both, for the establishment of any new or expanded industrial chipmill facility, the department must find that the applicant's operations will not have an unreasonable adverse effect on the long-term viability of Tennessee's forest resources. In making this finding, the

commissioner shall consider the cumulative effect of the applicant's maximum harvest of timber resources in conjunction with the consumption of other wood using industries within the procurement zone.

SECTION 6.

(a) Any applicant seeking any form of financial assistance or economic incentive referenced in Section 5 shall prepare and submit at its own expense a forest resource report to the department in a format prescribed by the commissioner. All applicants for financial assistance or economic incentive under this act shall reimburse the department's costs in reviewing the applicant's forest resource report, conducting the public hearing required under Section 8 of this act, and any other affirmative obligation required by this act.

(b) The forest resource report will detail the following information:

(1) The existing or proposed location of the facility designated on a map and by geographically referenced coordinates;

(2) The maximum production capacity of the facility;

(3) The maximum wood consumption capability of the facility reported in terms of tons, cords or board feet of roundwood, including chipped wood delivered to the facility from mobile and harvest site chipping equipment, if applicable. The diameter classes and grade of timber by species, and the approximate percentage mix of species to be used and the impact on the residual stand shall be specified;

(4) The projected life of the facility;

(5) The projected number of employees at the facility;

(6) A list of all required environmental permits that will be required or have been granted;

(7) A map of the procurement zone or zones from which timber will be harvested to supply the facility;

(8) The supply of timber as known to the applicant and the annual harvest required to supply the facility at maximum production from each procurement zone. Forest lands owned by the applicant shall be identified on the map;

(9) The estimated existing and future consumption by other wood-using industries, if reasonably available, within the projected procurement zones of the industrial chipmill facility and the effect of the facility's maximum harvest rate on the forest inventory;

(10) A list of other states in which the applicant operates a facility, or has operated a facility or from which it has been supplied with timber within the past three (3) years;

(11) A description of the applicant's land stewardship practices relative to post harvest operations, if applicable;

(12) A list of any notice of violation, administrative penalty, or civil or criminal liability in conjunction with the applicant's operations by any federal, state, and local regulatory authority during the past three (3) years including, but not limited to, Tennessee's bad actor policy, stop work order, or citizen complaints;

(13) A list of all civil actions pending or maintained by private landowners against the applicant relative to its operation during the past three (3) years; and

(14) Such other information as the department shall specify.

(c) In preparing the forest resource report, the applicant shall review and consider the United States Forest Service Southern Annual Forest Inventory System data, and such other data available from the department concerning the amount or rate

of growth, removal, and other factors affecting the forest resources. Forest inventory data and estimated timber supply and availability shall be adjusted to reflect availability for harvest. Such adjustments shall use appropriate analytical models including, but not limited to, those used by the United States Forest Service which are capable of being applied to existing data. To the extent data and methods are available, the adjustments shall provide for timber which is unavailable for harvest because it is held in public ownership; is within or part of an officially designated natural resource or historic site; is located on soils or slopes which should not be disturbed or left unprotected by removal of forest cover under soil conservation standards; must be left to protect riparian areas under best management practices; may not be harvested due to land use controls or plans; is unavailable as shown by information concerning landowner objectives and attitudes; or is otherwise unavailable for harvest. The report shall also consider data from the Southeast Forest Sustainability Study when this data becomes available.

SECTION 7.

(a) The department shall review the forest resource report as prepared by the applicant in conjunction with any other relevant information or data available to the department and must find that the applicant's operations will not have an unreasonable adverse effect on the long-term viability of Tennessee's forest resources. In making this finding, the commissioner shall consider the cumulative effect of the applicant's maximum harvest of timber resources in conjunction with the consumption of other wood-using industries within the procurement zone.

(b) The department shall seek the assistance of the department of environment and conservation's natural heritage program and the division of water pollution control, the department of economic and community development, the department of tourism,

the department of revenue, the Tennessee wildlife resources agency, and such other public or private agencies as the department may seek to involve.

SECTION 8.

(a) The department shall publish notice of the receipt of an applicant's forest resource report in a newspaper of general circulation in the county in which the facility is proposed to locate and in counties that encompass the proposed procurement zones within seven (7) days of receipt. This notice shall also be posted on Internet web pages maintained by the department of economic and community development and the web pages maintained by the department. The notice shall state the nature of the operation and the amount and nature of the economic assistance requested and the availability of copies of the report for public inspection.

(b) Within at least forty-five (45) days of receipt of the forest resources report, the department shall hold a public hearing to accept comments on the applicant's forest resource report. The commissioner shall consider all comments received prior to and within thirty (30) days after the public hearing and shall prepare a responsiveness summary to all comments received during and prior to the public hearing as a part of such commissioner's final order approving or denying the applicant's request for financial assistance.

SECTION 9.

The commissioner shall, by order, either approve or deny the applicant's request for financial assistance. Such decision is subject to appeal rights set forth in the Uniform Administrative Procedures Act compiled in Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 10.

As a condition of receiving financial assistance or economic incentive set forth in Section 5, the industrial chipmill facility must agree to:

- (1) Enforceable best management practices as established by the Tennessee division of forestry and the department of environment and conservation, division of water quality;
- (2) Logger education, training, and contracting programs for landowners;
- (3) Forest stewardship and other assistance programs for landowners;
- (4) Enforceable ground water protection plans; and
- (5) Such other mitigation as the department or the department of environment and conservation may advise.

SECTION 11.

If an applicant is awarded financial or economic incentives set forth in Section 5, the applicant can apply a portion of these funds to recoup the expenses incurred in the preparation of the forest impact report and the costs paid to the department of agriculture associated with its obligations under this act.

SECTION 12. The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 13. For purposes of promulgating rules and regulations, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes this act shall take effect on July 1, 2005, the public welfare requiring it.